SELANGOR OMNIBUS CO. LTD. v. TRANSPORT WORKERS' UNION, MALAYA

[O.C.J. (Gill J.) February 17, 1967]

[K.L. — Originating Summons No. 159 of 1966]

Administrative Law — Industrial Arbitration Tribunal — Whether tribunal subject to certiorari of High Court — Whether proceedings commenced under "old regulations" valid under "new regulations" — Essential (Arbitration in Essential Services) Regulations, 1965 — Essential (Trade Disputes in Essential Services) Regulations, 1965.

This was an application for an order of *certiorari* to quash an award of the Industrial Arbitration Tribunal constituted under the Essential (Arbitration in Essential Services) Regulations, 1965 — referred to as the "old regulations". Whilst the tribunal was in the process of hearing an alleged trade dispute in consequence of a report by the Minister of Labour under regulation 4(1) of the "old regulations", the "old regulations" were repealed by the Essential (Trade Disputes in Essential Services) Regulations, 1965 — referred to as the "new regulations". Under the second schedule to the "old regulations" the tribunal consisted of a quorum of a chairman and two other members. Under the "new regulations" the tribunal consisted of a quorum of a chairman and three other members. The applicant contended that the tribunal constituted under the "old regulations" had no jurisdiction to continue proceedings under the "new regulations" after the repeal of the "old regulations" because it was not constituted in accordance with the "new regulations". A preliminary objection based on regulation 9 of the new regulations was taken as to the jurisdiction of the High Court to entertain the application.

Held: (1) although by regulation 9 of the "new regulations" the award of the tribunal "shall be final conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court", there is a line of authorities to the effect that the wording of regulation 9 did not suffice to prohibit an application for *certiorari*, whether on the ground of error of law on the face of the record or excess or lack of jurisdiction;

(2) the proceedings commenced under the "old regulations" were deemed for all purposes to be proceedings under the "new regulations" by virtue of the proviso to regulation 17 of the "new regulations". The effect of that proviso was that the tribunal constituted under the "old regulations" became the tribunal under the "new regulations", notwithstanding the differences in the mode of constitution under the two regulations.

Cases referred to:—

(1) *R.* v. *Medical Appeal Tribunal, ex parte Gilmore* [1957] 1 K.B. 574.

(2) *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 K.B. 711, 716.

ORIGINATING SUMMONS.

Ng Ek Teong (*R. Padmanabhan* with him) for the applicant.

James Puthucheary for the 1st respondent.

Au Ah Wah (Treasury Solicitor) for the 2nd and 3rd respondents.

Gill J.: This was an application for an order of *certiorari* to remove into this court for the purpose of their being quashed the proceedings and Award No. 11 dated the 24th of June, 1966 in Case No. 1 of 1965 before the Industrial Arbitration Tribunal.

The proceedings before the tribunal arose in consequence of a report on 21st May, 1965 to the Minister of Labour under regulation 4(1) of the Essential (Arbitration in the Essential Services) Regulations, 1965 (hereinafter referred to as the "old regulations") of an alleged trade dispute between the Transport Workers Union, Federation of Malaya, and the Selangor Omnibus Co. Ltd. (the applicants in this case). The Minister of Labour referred the dispute for settlement to the tribunal under regulation 4(4) of the old regulations on 10th June, 1965. The hearing of the dispute before the tribunal commenced on 15th July, 1965 and concluded on 24th May, 1966, followed by its award on 24th June, 1966.

The old regulations were repealed by the Essential (Trade Disputes in the Essential Services) Regulations, 1965 (hereinafter referred to as the "new regulations"). Regulation 17 of the new regulations by which the old regulations were repealed contains the following proviso:—

> "Provided that all acts commenced or done under the regulations hereby repealed shall have effect for all purposes as if such acts had been commenced or done under the provisions of these regulations and as if these regulations had then been in force."

The Second Schedule to the old regulations provided that the Industrial Arbitration Tribunal shall consist of a chairman and four other members appointed by the Minister of Labour. These four other members were to be selected by the Minister of Labour from a panel of persons constituted by the Minister of Labour and the persons on the panel were to remain thereon for such period as the Minister of Labour might specify at the time of their appointment. The quorum necessary to constitute a sitting of the tribunal was to be the chairman and two other members of the tribunal.

The Second Schedule to the new regulations provides that for the purpose of constituting the Industrial Arbitration Tribunal there shall be (a) a chairman, (b) a panel of independent persons, (c) a panel of persons representing employers and (d) a panel of persons representing workmen appointed by the Minister for such period as he may specify at the time of appointment. The tribunal under the new regulations consists of the chairman together with three persons selected by the Minister, one from each of the panels specified.

Mr. James Puthucheary on behalf of the Transport Workers Union took a preliminary objection to the proceedings on the ground that this court had no jurisdiction to entertain the application. This preliminary objection was

based on regulation 9 of the new regulations, which reads as follows:—

"Subject to the provisions of these regulations an award of the Industrial Arbitration Tribunal shall be final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court."

I ruled against the preliminary objection because it seemed clear to me from a line of authorities that the wording of regulation 9 did not suffice to prohibit applications for *certiorari*, whether on the ground of error of law on the face of the record or excess or lack of jurisdiction (see *R.* v. *Medical Appeal Tribunal, Ex-parte Gilmore* (1)). In *R.* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw* (2) Lord Goddard C.J. said:—

"Many statutes took away *certiorari* in respect of the matters with which those statutes dealt, but that *certiorari* was taken away never debarred the court from granting *certiorari* if a question of jurisdiction arose; the justices or inferior tribunal could not give themselves jurisdiction, and if they had purported to give themselves jurisdiction which they had not, *certiorari* would lie to quash their order, because they had no jurisdiction to make it. The taking away of *certiorari* by statute prevented the court of King's Bench, no doubt, from inquiring into what I may call the merits of the determination. That power was taken away and the decision of the inferior court was to be regarded as final on its merits. But that did not prevent the court of King's Bench from inquiring whether or not the inferior court had any jurisdiction to make the order at all. I think that is the explanation why one finds many instances in the books where, although by a statute such decision was not to be removed into any court by writ of *certiorari* or otherwise, *certiorari* has been granted in respect of that very matter, but only on the ground of want of jurisdiction."

The main ground for the application was that the tribunal constituted under the old regulations had no power to carry on the proceedings after 31st December, 1965, as it was not constituted in accordance with the provisions of the new regulations. It was contended that the effect of the repeal of the old regulations was to render it obligatory for the proceedings carried out under the old regulations to be suspended and the matter to be commenced *de novo*.

In my judgment there was no merit in this application. The alleged trade dispute was reported to the Minister of Labour under the old regulations, under regulation 4(1) of which the decision of the Minister as to whether a dispute had been so reported to him was conclusive for all purposes, and the dispute was properly referred to the tribunal under regulation 4(4). The Industrial Arbitration Tribunal which commenced to hear the dispute was duly constituted under the old regulations.

With the repeal of the old regulations and the coming into force of the new regulations on 23rd September, 1965, the proceedings commenced before the tribunal were deemed for all purposes to be proceedings under the new regulations by virtue of the proviso to regulation 17 of the new regulations. To say otherwise would be to render nugatory the effect of that proviso. The effect of that proviso, to my mind, was that the tribunal constituted under the old regulations became a tribunal under the new regulations, notwithstanding the difference in the mode of constitution under the two regulations. In other words, as from 23rd September, 1965, the dispute before the tribunal was to be deemed as if it were a dispute referred to the tribunal under the new regulations and the tribunal itself was to be deemed as if it were a tribunal constituted under the new regulations.

There is no dispute as to the appointment of the chairman both under the old regulations and the new regulations. The appointment under the old regulations was made *vide* G.N. 2444/65 and under the new regulations *vide* G.N. 1009/66. The other members of the tribunal were on the panels appointed both under G.N. 2444/65 and G.N. 1009/66. By reason of the proviso to regulation 17 of the new regulations the panel appointed under the old regulations was deemed to be a panel appointed under the new regulations. I would go so far as to say that the effect of the saving clause contained in the proviso was to assimilate into the new regulations the old regulations in so far as they applied to any act commenced under the old regulations.

There were a number of other grounds in support of the application. They were not seriously pursued, and in my opinion none of them impinged on the question as to whether or not the tribunal had acted without jurisdiction or exceeded its jurisdiction.

For the reasons stated, I dismissed the application with costs.

Application dismissed.

Solicitors: *Braddell & Ramani; Skrine & Co.*

TAY CHEO v. CHOW NGIA

[F.C. (Barakbah L.P., Ismail Khan & Ali J.J.) February 18, 1967]

[J.B. — Federal Court Civil Appeal No. X15 of 1966]

Practice and Procedure — Jurisdiction of magistrate's courts — Claim for arrears of rent — Party raising question of title — Magistrate exercising jurisdiction under s. 90 — Courts Ordinance, 1948, ss. 70(4) & 90.

Landlord & Tenant — Tenant in possession — Estopped from denying landlord's title — Evidence Ordinance, 1950, s. 116.

The question raised in this appeal was whether the magistrate had exceeded his jurisdiction in hearing the case. In a claim for arrears of rent by the appellant in respect of premises let to the respondent, the respondent denied that the landlord had any title to the land. The preliminary point as regards jurisdiction was resolved by the magistrate in ruling that as he was not acting under section 70 of the Courts Ordinance, he had